

# FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

## PROCEDURES TO RESOLVE STUDENT-TO-STUDENT COMPLAINTS OF HARASSMENT AND DISCRIMINATION

Foothill-De Anza Community College District is actively committed to creating and maintaining an environment which respects the dignity of individuals and groups. The policy of the Foothill-De Anza Community College District is to provide an educational and employment environment in which no person shall be unlawfully subjected to discrimination on the basis of national origin, religious creed, age, sex, race, color, ancestry, sexual orientation, gender identity, marital status, medical condition, or physical or mental disability or be unlawfully denied full and equal access to or the benefits of, any program or activity that is administered by, funded directly by, or that receives any financial assistance from the State Chancellor or Board of Governors of the California Community Colleges.

The procedures outlined below govern the process of complaints filed by a student against another student, or student against the criteria of a program. If the complainant is a student and the respondent is a college or district employee, or student employee, such complaints shall be referred and handled pursuant to the District's *Administrative Procedures: Investigation and Resolution of Complaints Regarding Harassment and Discrimination*. Complaints by students regarding harassment or discrimination by third parties who are not themselves students or employees in the District shall be investigated. Additionally the District shall forward written notice to the responsible party with a request for an investigation of the incident(s) and a report of the findings to be sent to the District.

### **I. HARASSMENT AND DISCRIMINATION POLICY**

The Foothill-De Anza Community College District provides an educational, and employment environment free of unlawful harassment and discrimination. The Board shall not discriminate against any person in the provision of any program or service based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or gender identity, or any other legally protected status. Anyone who engages in unlawful harassment or discrimination shall be subject to sanction up to and including termination of employment or expulsion in accordance with applicable contractual, procedural and statutory requirements. The comprehensive District policy for Harassment and Discrimination is contained in District Board Policy 4640.

### **II. STUDENT NOTIFICATION, TRAINING AND EDUCATION**

A training program or informational service is available to all students at least once annually. The student training or informational service includes an explanation of the policy, how it works, and how to file a complaint. In addition, a copy of the District's written policy on unlawful

discrimination and harassment, as it pertains to students, is provided as part of any orientation program conducted for new students.

District employees involved in any aspect of investigating or resolving a complaint of harassment or discrimination receive training in the handling of such complaints in advance of their service in such capacity.

### **III. RETALIATION**

It is unlawful for anyone to retaliate against someone who files a harassment or discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of the District Harassment and Discrimination policy.

### **IV. DEFINITIONS**

Definitions applicable to nondiscrimination policies are as follows:

1. **Appeal:** A request by a complainant made in writing to the District Board of Trustees pursuant to Section 59338 of the California Code of Regulations, Title 5, and/or to the State Chancellor's Office pursuant to Section 59339 to review the administrative determination regarding a complaint of harassment or discrimination.
2. **Campus Coordinator:** The designated campus administrator responsible for implementing the harassment and discrimination policy and procedures on each campus.
3. **Complaint:** A written and signed statement meeting the requirements of Section 59328 of Title 5, California Code of Regulation which alleges unlawful harassment or discrimination.
4. **Complainant(s):** An individual or group of individuals who believe that he/she/they have been victims of harassment or discrimination.
5. **Days:** Calendar days, unless otherwise specified.
6. **Discrimination on the basis of sex:** Sexual harassment or discrimination on the basis of gender.
7. **Representative:** A person selected by the complainant or the respondent to advise them in this process. A representative may be a District employee, student, legal counsel or another individual selected by the party.
8. **Respondent(s):** An individual or group of individuals against whom a claim of harassment or discrimination is made.

9. **Responsible person(s) at the involved college:** This group, composed of the Vice Chancellor of Human Resources and Equal Opportunity, and two college administrators appointed by the Vice Chancellor of Human Resources, is responsible for determining the findings of a formal investigation and recommending appropriate action. Every effort is made to incorporate broad representation among members of this group.

10. **Unlawful harassment** comes in many forms and may include but is not limited to the conduct described below:

Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's race, gender, sexual orientation, or other status protected by law. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting, whistling, or propositions, demands for sexual favors, verbal abuse, threats or intimidation.

Physical: Inappropriate or offensive touching, assault, or physical interference with free movement. This may include but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, unnecessarily brushing against or blocking another person, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's race, gender, sexual orientation or other status protected by law. It may also include leering or staring.

Visual or Written: The display or circulation of visual or written material that degrades an individual or groups based on race, gender, sexual orientation or other status protected by law. This may include but is not limited to posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.

Environmental: A hostile academic or work environment exists where it is permeated by innuendo or insults or abusive comments directed at an individual or group based on race, gender, sexual orientation or other status protected by law. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his or her immediate surroundings, although the conduct is directed at others.

For an unlawful harassment or hostile environment claim to be valid, in general the conduct must be sufficiently severe or pervasive so as to alter the conditions of the employment or educational environment. Subjective perception alone is insufficient evidence for a claim to be valid; an objective appraisal must be considered as well. The conduct shall be evaluated from the objective viewpoint of a reasonable person facing the same conditions.

11. **Sexual harassment:** As noted above, sexual harassment may be verbal, visual, written, physical or environmental and, as such, is a form of unlawful harassment.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in

the workplace or in the educational setting.

“Quid pro quo” harassment occurs when submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.

“Hostile environment” harassment occurs when the conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.

12. **Student:** A currently enrolled student, a person who has filed an application for admission to the college, or a former student.
13. **Working Days:** The days that the District Office is open for customary business.

## **V. RESPONSIBLE DISTRICT OFFICER**

The Vice Chancellor of Human Resources and Equal Opportunity is the District officer responsible for the administration and implementation of these policies and procedures. The Vice Chancellor may be contacted at (650) 949-6210, Foothill-De Anza Community College District, 12345 El Monte Road, Los Altos Hills, CA 94022.

## **VI. COMPLAINT PROCEDURES**

In accordance with Board policy prohibiting unlawful discrimination and harassment, the purpose of these procedures is to provide both an informal and a formal process for the filing and investigation of student-to-student complaints, to prohibit retaliation against victims of discrimination, and to work toward its prevention.

### **A. How To File A Complaint**

The District encourages its students to contact the appropriate Campus Coordinator prior to filing a complaint or to obtain assistance in determining whether or not an individual has been or is a victim of discrimination or sexual harassment. The designated Campus Coordinator for Foothill College is Don Dorsey, Dean of Student Affairs and Activities, 12345 El Monte Road, Los Altos Hills, CA 94022, (650) 949-7241; and the designated Campus Coordinator for De Anza College is Trudy J. Walton, Dean of Student Development and EOPS, 21250 Stevens Creek Blvd., Cupertino, CA 95014, (408) 864-8828. Formal complaints will be processed by Jane Enright, Vice Chancellor of Human Resources and Equal Opportunity, at the District Human Resources office.

A copy of these procedures, and the District's Student-To-Student Unlawful Discrimination Complaint forms, are available in the Office of the Dean of Student Development and EOPS (De Anza), the Office of the Dean of Student Affairs and Activities (Foothill), the Office of the Vice President for Student Services (De Anza), and the District Human Resources office. Complaint procedures and forms are also available online and can be accessed via the District’s website at <http://hr.fhda.edu/diversity/policies>.

## **B. Informal Complaint Procedure**

The purpose of the informal complaint procedure is to allow individuals who believe that they have been discriminated against to resolve the issue through a mediation process rather than a more formal procedure. If informal resolution of the concern is possible, it is not necessary to pursue a formal complaint.

1. A student who believes that he or she has personally suffered harassment or discrimination by another student, or would like assistance in determining whether or not he or she has been or is a victim of harassment or discrimination, shall be referred to the designated Campus Coordinator at the college where that complaint originates to discuss his or her concerns.
2. The Campus Coordinator shall meet with the concerned individual to:
  - a. Understand the nature of the concern and undertake efforts to informally resolve the complaint;
  - b. Give the complainant a copy of the District policy and procedure concerning such unlawful harassment and discrimination and inform complainant of his or her rights under any relevant complaint procedure or policy;
  - c. Advise the complainant that he or she need not participate in informal resolution;
  - d. Notify the person bringing the charges of his or her right to file a formal complaint and explain the procedure for doing so;
  - e. Assure the complainant that he or she will not be required to confront or work out problems with the person accused of unlawful discrimination;
  - f. Advise the complainant that he or she may file a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 United Nations Plaza, Room 239, San Francisco, CA 94102, at the time of filing an informal complaint, or during or after use of the District harassment or discrimination formal complaint process.
3. Both parties shall be advised that they may be accompanied by a representative throughout the informal process.
4. If the parties agree to a proposed resolution that does not include disciplinary action, the resolution shall be implemented and the informal process shall be concluded. At any time during the informal process, the complainant may initiate a formal complaint by completing and signing the District's Student-To-Student Unlawful Harassment and Discrimination Complaint form or an approved form obtained from the California State Chancellor's Office.

5. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to Section 59334 of Title 5, California Code of Regulations, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Any efforts at informal resolution after the filing of a written complaint will not exceed the 90-day period for rendering the administrative determination pursuant to Title 5, section 59336.

### **C. Formal Complaint Procedure**

To initiate the formal process, a student shall complete and sign the District's Student-To-Student Unlawful Discrimination Complaint form within one year of the date on which the complainant knew or should have known of the facts of the harassment or discrimination incident. The District's complaint form can be obtained from the District website at <http://hr.fhda.edu/diversity/policies>.

An approved complaint form can also be obtained from the State Chancellor's website as follows: <http://www.cccco.edu/divisions/legal/discrimination/discrimination.htm>

The student shall file the complaint with the designated Campus Coordinator at the college where the incident occurred. On the complaint form, the complainant shall describe in detail the alleged discrimination or harassment and the action the complainant requests to resolve the matter. The complaint must be signed and dated and shall contain at least the name(s) of the individual(s) involved, the approximate date(s) of the event(s) at issue and a detailed description of the actions constituting the alleged harassment or discrimination.

Defective complaints will be returned within three (3) working days of receipt by the Campus Coordinator or designee to the complainant with a complete explanation of why an investigation could not be initiated under Title 5, California Code of Regulations, Section 59300 et seq.

## **VII. INVESTIGATION UPON FILING A FORMAL WRITTEN COMPLAINT**

1. Within three (3) working days upon receipt of a complaint filed in accordance with the regulations, the Campus Coordinator shall commence an investigation, or shall appoint an investigator to investigate the charges, and shall also notify the Vice Chancellor of Human Resources and Equal Opportunity of the Foothill-De Anza Community College District and the Chancellor of the California Community Colleges System that a written complaint has been received and a formal investigation has begun. The complainant shall be advised that he/she may file a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), 50 United Nations Plaza, Room 239, San Francisco, CA 94102.
2. Once a formal complaint is filed in accordance with the regulations, the respondent(s) shall be advised of that filing and shall be forwarded a copy of the complaint and these procedures. This shall occur as soon as possible and appropriate under the circumstances

(normally within five (5) working days). The respondent(s) shall also be advised of the following:

- a. Assessment of the accuracy of the allegations has not yet been made;
  - b. The complaint will be investigated;
  - c. He or she will be provided an opportunity to present his or her side of the matter; and
  - d. Any conduct that could be viewed as retaliatory against the complainant or any witnesses must be avoided.
3. The investigator shall, within ten (10) working days of the complainant's referral to the formal process, give the complainant an opportunity to meet with the investigator to review the nature of the complaint and identify the scope and nature of the investigation. If the complainant fails to meet with the investigator within a reasonable time (usually 15 working days), the investigator will continue the investigation to the best of its abilities based on the written formal complaint.

Within ten (10) working days of meeting with the complainant, or 15 days as noted above, the investigator shall give the respondent an opportunity to meet with the investigator to receive the respondent's answer to the complaint and to review with the respondent the scope and nature of the investigation. If the respondent fails to meet with the investigator within a reasonable time, (usually 15 working days), the investigator will continue the investigation to the best of its abilities.

4. The investigator shall complete a full impartial fact-finding investigation. Parties may request the presence of witnesses and may present documents in support of their positions. Both parties shall be advised that they may be accompanied by a representative throughout the formal process. The parties may present written and oral evidence. The proceedings may be recorded on audio tape or such other method (such as videotape or stenographic record) as the formal process investigator may direct.
5. The investigator will review all credible factual information presented and incorporate such information into the investigative report. Confidentiality will be maintained to the extent possible. Once the investigation is complete, the investigator will meet with the complainant and respondent separately to give an overview of the steps taken during the investigation and to request additional information. Complainant and respondent will also be asked for the names of any others the investigator should speak with or if there is anything else he/she would like for the investigator to review before finalizing his/her report.
6. The results of the investigation shall be set forth in a written report and presented to the responsible person(s) at the involved college which shall include:
  - a. a description of the circumstances giving rise to the complaint;

- b. a summary of the information provided by each witness, including the complainant and any witnesses identified by the complainant in the complaint;
  - c. an analysis of any relevant data or other evidence collected during the course of the investigation;
  - d. any other information deemed appropriate.
7. Each college shall be responsible for reviewing the investigative report and making a specific finding as to whether there is probable cause to believe that harassment or discrimination occurred with respect to each allegation in the complaint. The findings shall take into consideration the severity of the conduct, the pervasiveness of the conduct, the pertinent background, and other relevant District policies.

### **VIII. DISCIPLINARY ACTION**

Harassment and discrimination are violations of the Student Code of Conduct and students are subject to disciplinary sanction for this behavior. If a violation of harassment or discrimination is sustained in any respect, the responsible person(s) at the involved college shall take the appropriate disciplinary measures, which may include: reprimand, probation, social probation, suspension or expulsion.

If disciplinary action is recommended, appropriate Due Process Procedures shall be invoked and the respondent shall have all the rights offered to him or her pursuant to the Due Process Procedures.

If the finding is that there is no evidence to sustain the allegations, the record shall be kept confidential except to the extent that disclosure may be required by law.

### **IX. CONFIDENTIALITY**

Complainants shall be informed that the law protects them against retaliation for filing an unlawful discrimination or harassment complaint. If a complainant requests that his or her name not be revealed, the Campus Coordinator shall explain that the process of investigation and determination is a confidential process but that it cannot guarantee the anonymity of the complainant. The Coordinator shall further inform the complainant of the college's obligation to investigate a complaint once it is formally notified of the complaint.

### **X. ADMINISTRATIVE DETERMINATION**

Within ninety (90) days of receiving a complaint of harassment or unlawful discrimination filed under Title 5, Sections 59300 et seq., the college shall complete its investigation and forward a copy of the investigative report to the State Chancellor, a copy or summary of the report to the complainant, and respondent, and written notice setting forth all the following to both the complainant and the Chancellor:

1. The decision of the college as to whether there is probable cause to believe harassment or discrimination occurred with respect to each allegation in the complaint;
2. A description of actions taken, if any, to prevent similar problems from occurring in the future;
3. The proposed resolution of the complaint; and
4. The complainant's right to appeal to the District Board of Trustees and to the State Chancellor of the California Community Colleges.

## **XI. COMPLAINANT RIGHTS TO APPEAL**

Complainants may appeal the results of the administrative determination. When the administrative determination and a copy of investigative report or summary is mailed to the complainant, the college will notify the complainant of his or her appeal rights as follows:

### **First level of appeal:**

The complainant has the right to file an appeal with the District's Board of Trustees within 15 days from the date of the administrative determination. The Board of Trustees will review the original complaint, the investigative report, the administrative determination, and the appeal. The Board of Trustees will either:

- (a) issue a final District decision in the matter within forty-five (45) days after receiving the appeal; or
- (b) elect to take no action within 45 days, in which case the original decision in the administrative determination will be deemed to be affirmed and shall become the final District decision in the matter.

A copy of the final decision rendered by the District Board of Trustees will be forwarded to the complainant and to the State Chancellor's Office.

### **Second level of appeal:**

The complainant shall have the right to file a written appeal with the Chancellor of the California Community Colleges System within thirty (30) days after the Board of Trustees has issued the final District decision or permits the administrative determination to become final by taking no action within 45 days. The appeal must be accompanied by a copy of the decision of the Board or evidence showing the date on which the complainant filed an appeal with the Board, and a statement under penalty of perjury that no response was received from the Board within 45 days from that date.

Complainants must submit all appeals in writing.

## **XII. RESPONDENT RIGHTS TO RESPOND**

Upon receipt of the administrative determination, the respondent shall also be notified that he or she may submit a written response within ten (10) days to the Campus Coordinator. The written response shall be included in the investigation file.

## **XIII. FORWARD TO THE STATE CHANCELLOR**

Within 150 days of receiving a complaint, the college will forward the following to the State Chancellor of the California Community Colleges in Sacramento:

- A copy of the final District decision rendered by the Board of Trustees, or a statement indicating the date on which the administrative determination became final as a result of taking no action on the appeal within 45 days.
- A copy of the notice of appeal rights that was sent by the college to the complainant.
- Any other information that the State Chancellor may require.

## **XIV. EXTENSIONS**

If for reasons beyond its control, the college is unable to comply with the 90-day or 150-day deadlines specified above for submission of materials to the complainant and the State Chancellor's Office, the college will file a written request that the Chancellor grant an extension of the deadline. The request will be submitted no later than 10 days prior to the expiration of the deadlines established by Title 5 in Sections 59336 and/or 59340 and will set forth the reasons for the request and the date by which the college expects to be able to submit the required materials.

A copy of the request for an extension will be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

The Chancellor may grant the request unless delay would be prejudicial to the complainant. If an extension of the 90-day deadline is granted by the Chancellor the 150-day deadline is automatically extended by an equal amount.

## **XV. DISSEMINATION**

The District will disseminate these procedures and related information regarding District policies and appropriate procedures on harassment and discrimination to all students, administrators and supervisors, and publish them in prominent places throughout the District including, but not limited to, the college catalogue, schedule of classes and/or student publications.